IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

SA.No.1100/2006
MP.No.1/2006

S.Murugesan — Appellant/Plaintiff

Vs.

1.V.Vijay Sai
2.Lavanya Velumani
3.Prasanna Venkatakrishnan
4.Dugar Finance & Investments Limited
by its Chairman, Tarachand Dugar
805, Anna Salai, Chennai-2 — Respondents 1 to 4/
Defendants 2 to 5

Prayer:- This Second Appeal filed under section 100 of Civil Procedure Code is filed against the judgement and decree dated 24.2.2006 made in AS.No.238/2005 on the file of the Additional District and Sessions Judge (FTC III) Chennai, confirming the judgement and decree made in OS.No.10153/1996 dated 17.11.2003, on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.N.S.Manoharan

JUDGEMENT

1.The Plaintiff, who lost his case before both the courts below, is the appellant in this second appeal. For the purpose of convenience, the parties are arrayed as they were arrayed in the suit.
2.The Plaintiff filed the suit in OS.No.10153/1996 before the VIII Assistant Judge, City Civil Court, Chennai for recovery of a sum of Rs.1,38,141/- being the present cost of construction together with interest thereon at 24% p.a. and another sum of Rs.1,49,700/- being the advance amount together with interest thereon at 24% p.a. and for permanent injunction, restraining the Defendants from disturbing his possession and enjoyment of the I Floor and the terrace as well as all other common portions or amenities as enjoyed by the Plaintiff being part of the schedule mentioned property in any manner and the trial court decreed the suit that the Plaintiff is entitled to get Rs.12,225.42/- towards the cost

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of the construction from the Defendants 2 to 4 at the time of vacating the suit property by the Plaintiff and that in other respects, dismissed the suit and decreed the counter claim of the Defendants with costs for a sum of Rs.74,906/- with future interest thereon at 12% p.a. from the date of counter claim i.e. from 28.10.1994 till the date of the decree and at 6% p.a. thereafter till payment. As against the same, the Plaintiff filed an appeal in AS.No.238/2005 before the Additional District and Sessions Judge (FTC III) Chennai, which was dismissed, confirming the judgement and decree of the trial court. Aggrieved by the same, this second appeal has been filed by the Plaintiff.

3. The case of the Plaintiff as set out in the plaint is as follows:- The Plaintiff was a tenant under a rental agreement dated 1.3.1972 in respect of the I Floor with open terrace as mentioned in the plaint schedule belonged to the 1st Defendant on a monthly rent of Rs.300/-. The Plaintiff effected several improvements, alterations and additions in the I Floor at the cost of Rs.12,800/-. As per the agreement dated 1.3.1972, Ex.A1, the Plaintiff was allowed to put up constructions and sublet a portion and the 1st Defendant has to repay the cost of the constructions at the market rate prevailing at the time of vacating the premises to the Plaintiff. The Plaintiff and the 1st Defendant exchanged Exs.A3 to A5, thereby the 1st Defendant agreed to pay the entire cost of the construction as per the prevailing market rate on the date of vacating the premises. While things are as such, the said property was sold to the 5th Defendant and hence, the suit was filed for recovery of the amounts as stated above and for permanent injunction against all of them.

4. The said suit was resisted by the Defendants by filing a written statement before the trial court, contending that the Plaintiff was permitted to carry out certain alterations for the above said cost and that the 1st Defendant agreed to repay the same and that the Plaintiff has not paid any rental advance and that the amount payable by the Defendants was only a lesser amount and not as claimed by the Plaintiff as per the prevailing market value at the time of vacating the premises in dispute and that even prior to the filing of the said suit, the 1st Defendant filed RCOP.No.1947/1986 for fixation of fair rent and the monthly fair rent was fixed at Rs.1,418/- by the rent control authority and as against the same, the Plaintiff filed appeal in RCA.No.1006/1992 and the 1st Defendant filed an appeal in RCA.No.1005/1992 for enhancement of rent and that the rent control appeal filed by the Plaintiff was dismissed and the rent control appeal filed by the 1st Defendant was allowed, enhancing the rent at Rs.1470/- by a common judgement and decree dated 22.2.1996 and that pending the said rent control appeal proceedings, the suit has been filed against all of them and counter claim was filed by the 1st Defendant for a sum of Rs.74,906/- with future interest thereon at 12% p.a. against the Plaintiff.

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5. Before the trial court, the Plaintiff marked Ex.A1, rental agreement dated 1.3.1972, Ex.A2, abstract estimate, Ex.A3, receipt dated 15.11.1972 for Rs.5,000/-, Ex.A4, receipt dated 13.12.1972 for Rs.15,000/-, Ex.A5, receipt dated 1.1.1973 for Rs.70,000/-, Ex.A6, receipt dated 1.11.1973 for Rs.59,100/-, Ex.A7, statement of accounts, Ex.A8, letter dated 27.8.1994 with acknowledgement written by the Plaintiff, Ex.A9, cheque with covering letter dated 26.2.2002 and Ex.A10, valuation report dated 22.7.2003 and examined himself as PW.1 and one P.Dhinakar as PW.2. The Defendants marked Ex.B1, copy of judgement in RCOP.No.1947/86 dated 17.3.1992, Ex.B2, copy of decree in RCOP.No.1947/86 dated 17.3.1992, Ex.B3, copy of notice with acknowledgement dated 5.4.1973, Ex.B4, copy of notice dated 26.9.1983, Ex.B5, copy of reply notice dated 6.10.1983, Ex.B6, copy of appeals in RCA.Nos.1005/92 and 1006/1992 dated 22.2.1996, Ex.B7, copy of decree in RCA.Nos.1005/92 and 1006/1992 dated 22.2.1996, Ex.B8, copy of reply notice with acknowledgement dated 12.4.1973, Ex.B9, copy of lawyer's notice dated 26.9.1983, Ex.B10, copy of reply notice dated 6.10.1983, Ex.B11, copy of the order in RCOP.No.1947/86 dated 17.3.1992, Ex.B12, copy of letter with acknowledgement dated 10.8.1992, Ex.B13, copy of letter with acknowledgement dated 7.10.1992, Ex.B14, copy of notice with acknowledgement dated 24.8.1994, Ex.B15, copy of reply notice dated 25.9.1994, Ex.B16, copy of rejoinder dated 22.10.1994 and Ex.B17, copy of Written Statement in OS.No.4085/1981 dated 27.2.1982 and examined the 3rd Defendant as DW.1 and the 5th Defendant as DW.2.

6. The trial court, after considering the oral and documentary evidence and the orders of the rent control authorities referred to above, came to the conclusion that the Plaintiff is entitled to get Rs.12,225.42/- towards the cost of the construction from the Defendants 2 to 4 at the time of vacating the above said suit property, while dismissing the suit in other respects, and decreed the counter claim of the Defendants for a sum of Rs.74,906/- with future interest thereon at 12% p.a. from the date of counter claim i.e. 28.10.1994 till the date of decree i.e. 17.11.2003 and at 6% p.a. thereafter till payment.

7. The lower appellate court also found that the Plaintiff was the tenant under Lakshmipathy Naidu from 1.3.1972 onwards as per the rental agreement, Ex.A1 dated 1.3.1972, and the said Lakshmipathy Naidu himself filed a petition in RCOP.No.1947/1986 and the fair rent was fixed at Rs.1418/- for the I Floor, which was in occupation of the Plaintiff and that both the Plaintiff and the said Lakshmipathy Naidu filed rent control appeals in RCA.Nos.1006/92 and 1005/92 and the fair rent was fixed at Rs.1470/- p.m. by common order dated 22.2.1996, Ex.B6 and it was also further held by the lower appellate court that the Defendants marked Ex.B4, notice dated 26.9.1983 and Ex.B3, notice dated 5.4.1973, during the cross examination of Plaintiff/PW.1 on

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14.7.2003 and that in Ex.B4, it is found mentioned as under:-

> "This is therefore, to call upon you for payment of the said sum of Rs.12,250/- expended by my client towards repairs. My client states further that he has paid a total sum of Rs.20,900/- as advance which amount also you are liable to return to my client.
>
> This is therefore, to call upon you to return the said sum of Rs.33,150/- failing which my client will be constrained to file a suit for recovery of the said amount and also attach the property as you are making arrangements of the sale of the property in which event you will be liable for interest and cost."

and that in Ex.B3, dated 5.4.1993, the first notice, the Plaintiff has not mentioned anything about the payment of advance allegedly made by him to the Defendants or the payments made under Exs.A3 to A5. Considering Exs.A3 to A6, the lower appellate court further held that the signatures found in Exs.A3 to A6 are different from the signatures found in Ex.A1 and hence, refused to accept the same and that the Plaintiff has not proved his claim made in the suit and that on the contrary, the Defendants proved their counter claim by adducing both oral and documentary evidence and ultimately, dismissed the appeal, concurring with the findings of the trial court and confirming the judgement and decree of the trial court.

8. The learned counsel for the appellant has submitted that the lower appellate court misconstrued the recitals of Exs.A3 to A6 and came to a wrong conclusion that the 1st Defendant has not received further advance amounts of Rs.5,000/- on 15.11.1972, Rs.15,000/- on 13.12.1972, Rs.70,000/- on 1.1.1973 and Rs.59,100/- on 1.1.1973, in all totalling Rs.1,49,100/- and that the courts below committed an error in law in venturing on comparison of disputed signatures, even after an order to refer the documents for expert opinion was passed by the court by consent and that the lower appellate court erred in law in applying the doctrine of estoppel against the Plaintiff and refused to grant the relief under Exs.A3 to A6; that in concluding that the finding of the rent controller is binding on a competent Civil Court, and that the decree for fixation of fair rent without the owner of the property being a party to the proceedings is void ab initio and non est in law; that the courts below having granted a decree for the cost of the construction put up by the Plaintiff, erred in law in decreeing the counter claim based on the fair rent fixed for the said superstructure and prayed for setting aside the judgement and decree of the courts below.

9. This court heard the arguments of the learned counsel for the appellant and the material records placed.

10. The appellant herein filed the suit on 18.3.1993 and the said RCOP filed for fixation for fair rent by the 1st Defendant was disposed of on 17.3.1992, fixing the monthly fair rent at

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Rs.1418/-. The 1st respondent filed the counter claim, when he filed Written Statement on 28.10.1994, calculating the arrears of rent as per the decree passed in RCOP.NO.1947/1986 at Rs.74,906/- arrived at after deducting the amount paid by the appellant herein at the old rate of rent.

11. O.VIII R.6A of CPC reads as under:-

"Counter claim by Defendant: (1) A Defendant in a suit may, in addition to his right of pleading a set off under Rule 6, set up, by way of counter claim against the claim of the Plaintiff, any right or claim in respect of a cause of action accruing to the Defendant against the Plaintiff either before or after the filing of the suit but before the Defendant against the Plaintiff either before or after the filing of the suit but before the Defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not:

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce a final judgement in the same suit, both on the original claim and on the counter claim.

(3) The Plaintiff shall be at liberty to file a Written Statement in answer to the counter claim of the Defendant within such period as may be fixed by the court.

(4) The counter claim shall be treated as a plaint and governed by the rules applicable to plaints."

12. The effect of the Rule 6A from the point of view of pleading, to assimilate the counter claim with a plaint in a suit and is therefore governed by the same rules of pleading as a plaint. The rights granted to the Defendants to set up counter claim are not only limited for the claim put forth by the Plaintiff in a suit itself, and even the cause of action need not be the same; there is nothing in Order 8, Rule 6 or 6A of CPC, restricting the nature of relief which the Defendants might seek in the counter claim. The Defendant can set up by way of counter claim any right or claim against the Plaintiff which arises before the Defendant has delivered his defence or before the time limited for delivering his defence has expired. The court can treat a counter claim as a plaint in a cross suit and hear the two suits together, provided necessary court fee has been paid. The essence of a counter claim is that Defendant should have an independent cause of action in the nature of a cross action and not merely a defence to the Plaintiff's claim.

13. Order VIII Rule 6B of CPC reads as under:-

"Counter claim to be stated: Where any Defendant seeks to rely upon any ground as supporting a right of counter claim, he shall, in his Written Statement, state specifically that he does so by way of counter claim."

It is admitted in this case that the respondents herein complied

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with the said Rule 6B.

14.Order VIII Rule 6C reads as under:-

"Exclusion of counter claim:- Where a Defendant sets up a counter claim and the Plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter claim but in an independent suit, the Plaintiff may, at any time before issues are settled in relation to the counter claim, apply to the court for an order that such counter claim may be excluded and the court may, on the hearing of such application make such order as it thinks fit."

15.Order VIII Rule 6E of CPC reads as under:-

"Default by Plaintiff of reply to counter claim:- If the Plaintiff makes default in putting in a reply to the counter claim made by the Defendant, the Court may pronounce judgement against the Plaintiff in relation to the counter claim made against him, or make such order in relation to the counter claim as it thinks fit."

16.In this case, it is not stated anywhere that the appellant herein has filed a reply to the counter claim or an application for exclusion of the counter claim as contemplated under O.VIII Rule 6C of CPC. The courts below considering the counter claim against the appellant herein, enforced the 1st Defendant's right and allowed it. Hence, the argument that the decree of the rent control authorities is not binding on the civil court does not arise for consideration.

17.It is also necessary to mention that the appellant herein and the 1st Defendant have filed rent control appeals, which were allowed on 22.2.1996, thereby the fair rent fixed in the RCOP at Rs.1418/- was enhanced by the Rent Control Appellate Authority to Rs.1,470/-. The argument of the counsel that the Rent Control Proceedings were disposed of without impleading the subsequent purchaser is beyond the scope of the second appeal, hence the same need not be considered here. Moreover, no records were produced to show any revision is filed against the order of the Rent Control Appellate Authority. The lower appellate Court stated in its judgment that the fourth respondent herein alone filed CRP No. 2194 of 1996 not satisfied with the quantum of fair rent fixed by the appellate authority.

18.Ex.B3 dated 5.4.1973 dismantle the case of the appellant that he made further payments of Rs.5,000/- on 15.11.1972, Rs.15,000/- on 13.12.1972, and Rs.70,000/- on 1.1.1973, since Exs.A3 to A5 are prior to Ex.B3. In Ex.B3 issued by the appellant herein, he has not mentioned about the said further three payments covered under Ex.A3 to A5, besides there is no whisper about the alleged advance of Rs.29,100/-. Considering the said documents, the courts below rejected the claim of the appellant in respect of the further payments under Ex.A3 to A5 and advance. It is also necessary to mention that in Ex.B3, the appellant called upon the 1st Defendant not to interfere with his possession on the ground that he

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incurred expenses in remodelling the premises in his occupation and nothing more found mentioned in Ex.B3. While so, it is also not possible to pay any further amount to the 1st Defendant as claimed under Ex.A6.

19.With regard to the another argument advanced by the learned counsel for the appellant that the court, though an order is passed by consent to send the disputed signatures for comparison with Ex.A1 to a handwriting expert, which were compared by the trial court and came to the conclusion that Ex.A3 to A6 are forged documents. It is also pointed out by the lower appellate court that when the execution of Exs.A3 to A6 was denied by the 1st Defendant, the onus lies on the appellant to prove, but he failed to prove by letting in valid evidence.

20.Section 73 of the Indian Evidence Act contemplates that the court may compare the disputed signature, writing or seal of a person with the signature, writings or seals which have been admitted or proved to the satisfaction of the court to have been written or made by that person. The court may rely upon its own comparison of the signatures, writing or seal. There is no legal bar to the court for using its own eyes to compare the disputed signature, writing or seal with the admitted signature, writing or seal under Section 73 of the said Act. Thus, the trial court after careful comparison of Ex.A3 to A6 with Ex.A1, came to the conclusion that the signatures found in E.A1 and Exs.A3 to A6 are not one and the same and they are not tallying with the admitted signature of the 1st Defendant.

It is argued by the learned counsel for the appellant that the conclusion of the appellate court with regard to the finding in the RCOP that Exs. A3 to A6 are forged is binding on parties is not tenable in Law. In a case of this nature, the principles of estoppel shall come into play. Where an issue of fact has been judicially determined between the parties, the same issues comes directly in question in subsequent proceedings between the same parties, then it will be illogical to allow the parties to re-open the same issue again and again, which not only destroys the binding nature of the judicial pronouncements but also renders such decision nugatory. As mentioned above, the petitioner has not challenged the order passed in Rent Control Appeal, but only the fourth respondent has filed CRP No. 2194 of 1996 not satisfied with the quantum of the enhancement of rent. Thus, the finding made against Exs. A3 to A6 reached finality, hence, the argument of the counsel for the appellant is rejected. In this context, it will be useful to refer to the decision (Hope Plantations Limited vs. Taluk Land Board, Peermade and another) (1999) 5 Supreme Court Cases 590 wherein in Para No.26, it is stated thus:-

> "26.It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata

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is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata, but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."

21. Further, in the light of Ex.B3 and B4, Exs.A3 to A6 could not have been executed by the 1st Defendant, besides that the execution of Exs.A3 to A6 are denied by the Defendants and hence, the primary burden to prove the execution of the same as well as the payment made is on the appellant, but he has not discharged his burden.

22. Considering the entire evidence and also the fact that the appellant herein was allowed to carry out certain repairs in the suit property, which was carried out by him, the courts below directed the Defendants 2 to 4 to pay a sum of Rs.12,225.42/- towards the cost of the construction to the Plaintiff and directed the Plaintiff to pay a sum of Rs.74,906/- with interest towards counter claim. It is needless to mention that the amount ordered to be paid by the Defendants to the Plaintiff be set off and the

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balance amount is payable by the Plaintiff as per the decree and judgement passed by the courts below.

23.In view of the above said discussions, this court is of the considered view that the said findings of the courts below are based on valid evidence. Further, no question of law, much less a substantial question of law is involved in this second appeal.

24.In the result, this second appeal fails and the same is dismissed, at the admission stage itself. No costs. Consequently, the connected MP is closed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To:

1.The Additional District and Sessions Judge (FTC III) Chennai

2.The VIII Assistant Judge, City Civil Court, Chennai

1 CC TO MR.N.S. MANOKARAN, ADVOCATE SR 49624

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